

NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND
DESICCANT AMENDMENT OF 1959

JULY 15, 1959.—Ordered to be printed

Mr. HOLLAND, from the Committee on Agriculture and Forestry,
submitted the following

R E P O R T

[To accompany H.R. 6436]

The Committee on Agriculture and Forestry, to whom was referred the bill (H.R. 6436) to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliant, and desiccants, and for other purposes, having considered the same, report thereon with a recommendation that it do pass with an amendment.

This bill provides for regulation of the labeling and marketing of nematocides, plant regulators, defoliant, and desiccants under the Federal Insecticide, Fungicide, and Rodenticide Act. By bringing these products under that act, the bill would also bring them under the pesticide chemicals amendment to the Federal Food, Drug, and Cosmetic Act (sec. 408 of that act), which provides the manner in which tolerances are established for their residues on raw agricultural commodities.

The bill is fully explained in the attached report of the House Committee on Agriculture. The amendment recommended by the House committee was adopted by the House.

The committee amendment corrects a reference in the bill to the United States Code. Section 408 of the Federal Food, Drug, and Cosmetic Act should be cited as "21 U.S.C. 346a", rather than "21 U.S.C. 348".

[H. Rept. 552, 86th Cong., 1st sess.]

The Committee on Agriculture, to whom was referred the bill (H.R. 6436) to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliant, and desiccants, and for other purposes, having considered the same,

report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out entire section 3(b), page 7, line 21, through page 8, line 14, and substitute therefor the following:

(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of enactment of the Act of July 22, 1954, 68 Stat. 511 (relating to pesticide chemicals on raw agricultural commodities) shall apply until—

(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) becomes effective, whichever date first occurs.

PURPOSE OF THE BILL

The purpose of this bill is to provide for the proper regulation of nematocides, plant regulators, defoliants, and desiccants which have become of great importance to agriculture and related interests during the last 10 years.

Nematocides are used to control very small worms known as nematodes or eelworms, many of which attack plants. Defoliants are used to make leaves drop from plants, generally to permit mechanical harvesting. Desiccants are used to hasten the drying of plant tissues, usually to facilitate harvesting or improve crop quality. Plant regulators are used to modify the normal growth processes of plants or the produce thereof, for such purposes as to prevent fruit drop, to hasten maturity, and to delay sprouting in storage. The products are defined in more precise technical terms in the bill.

The effect of the bill is to subject the aforementioned products to the same regulatory controls and requirements under the Federal Insecticide, Fungicide, and Rodenticide Act as are now applicable to insecticides, fungicides, weed killers, and rodenticides. By placing these products under that act, the bill would also effectively, although indirectly, place them under the pesticide chemicals amendment to the Federal Food, Drug, and Cosmetic Act (Public Law 518, 83d Cong.), insofar as residues in or on raw agricultural commodities may be involved, because of the interrelationship of the two acts.

The bill would accomplish its objective of placing nematocides, plant regulators, defoliants, and desiccants under the Federal Insecticide, Fungicide, and Rodenticide Act by expanding the present definition of "economic poison" in that act to include these products. It would also amend certain other definitions in the act and add some

additional ones, as necessitated by the broader coverage. However, it does not change the substantive provisions of the act as they relate to presently regulated products.

The bill would become effective upon enactment and thus permit the Department of Agriculture to begin the registration of the newly regulated products, as required by the Federal Insecticide, Fungicide, and Rodenticide Act, and also permit the Department of Health, Education, and Welfare to establish tolerances for them on raw agricultural commodities under section 408 of the Federal Food, Drug, and Cosmetic Act. However, in order to permit an orderly transition period for both the Government and the industry, provision is made to defer the applicability of certain sections of those two acts to some of these products until March 5, 1960, or such later date or dates, not beyond March 5, 1961, as the Secretary of Agriculture and the Secretary of Health, Education, and Welfare, respectively, may prescribe on the basis of a determination that such postponement is necessary to avoid hardships and will not be unduly detrimental to the public interest. These dates have been specified so as to have the fully effective dates under this bill coincide with those under the food additives amendment to the Federal Food, Drug, and Cosmetic Act (Public Law 85-929). Since some products which would be affected by this bill are also subject to the food additives amendment, it has appeared desirable that the two become fully effective at the same time.

BACKGROUND

The original Federal Insecticide Act was passed in 1910. The present Federal Insecticide, Fungicide, and Rodenticide Act was enacted in 1947 to reflect the then current situation as regards pest control chemicals and agricultural practices. It regulates the labeling and marketing of insecticides, fungicides, herbicides, and rodenticides which are collectively referred to in the act as "economic poisons," and commonly known as pesticides.

Since 1947, several new types of agricultural chemicals have been developed and have found widespread commercial application. These new products are generally referred to and are designated in this bill as nematocides, defoliants, desiccants, and plant regulators. While these products are now regulated under some State laws which correspond to the Federal Insecticide, Fungicide, and Rodenticide Act, they are not regulated under the latter statute. Because of the importance of these products to the agricultural interests of this Nation, various organizations and groups have expressed the opinion that they should be subject to similar regulation at the Federal level.

Experience has shown that regulation of agricultural pest control chemicals under the Federal Insecticide, Fungicide, and Rodenticide Act has been effective and beneficial to farmers and growers. Accordingly, it appears desirable that the same type of regulation, under the same act, should be applied to these more recently developed products.

HEARING

A hearing was held by the full committee on this bill. At the hearing, representatives from the Department of Agriculture, land-grant colleges, the Association of American Pesticide Control Officials,

Inc., farm and grower organizations, and the agricultural chemical industry appeared and testified unanimously in favor of the bill and urged its enactment.

COMMITTEE AMENDMENT

In addition to placing nematocides, plant regulators, defoliants, and desiccants under the Federal Insecticide, Fungicide, and Rodenticide Act, the bill also makes residues of such chemicals in or on raw agricultural commodities subject to the pesticide chemicals amendment to the Federal Food, Drug, and Cosmetic Act. The bill, as introduced, provided that that amendment would not be applicable to some of the chemicals for a period of time to be specified by the Secretary of Health, Education, and Welfare, but not extending beyond March 5, 1961. The committee amendment, adopted upon the recommendation of the Department of Health, Education, and Welfare, provides that during this transitional period, the adulteration provisions of the earlier law shall be applicable for the purpose of protecting the public health.

DEPARTMENTAL REPORTS

Reports recommending enactment of H.R. 6436 were received from both the Department of Agriculture and the Department of Health, Education, and Welfare. In connection with the estimates of cost in the report of the Department of Agriculture, it is to be noted that many of the products are now scheduled for regulation by the Food and Drug Administration under the provisions of the food additives amendment, so that transfer of their regulation to the Department of Agriculture under terms of this bill will be in part a transfer of administrative cost. Thus the estimates of administrative cost made by the Department of Agriculture are not all new or additional costs.

The amendment recommended by the Department of Health, Education, and Welfare was adopted by the committee.

MAY 21, 1959.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR CONGRESSMAN COOLEY: This is in reply to your request of April 16 for a report on H.R. 6436, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes.

This Department supports the purposes of the bill and recommends its enactment.

The bill would amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to bring within the provisions of that law four new classes of chemicals. These classes are nematocides, plant regulators, defoliants, and desiccants.

Our reasons for making the above recommendation are as follows:

(1) The new classes of chemicals which would be brought within the Federal Insecticide, Fungicide, and Rodenticide Act are characteristically agricultural chemicals. The regulation of their use

would provide the same protection to farmers and others using them as is now provided users of products subject to the present act.

(2) These materials have developed into significant agricultural usage since the Federal Insecticide, Fungicide, and Rodenticide Act was enacted in 1947. Thus, their inclusion within the provisions of that law appears warranted now on the basis of their vastly increased commercial usage.

(3) It is in the interest of uniformity in the regulation of agricultural chemicals to have nematocides, plant regulators, defoliants, and desiccants subject to the same requirements as are insecticides, fungicides, and herbicides.

(4) Many State pesticide statutes presently regulate these materials. The bill would bring them under Federal jurisdiction and would promote uniformity in Federal-State pesticide regulation.

It is estimated that \$350,000 would be required to administer the provisions of H.R. 6436.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

E. T. BENSON.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
May 20, 1959.

HON. HAROLD D. COOLEY,
*Chairman, Committee on Agriculture,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request of May 13, 1959, to the Commissioner of Food and Drugs for a report on H.R. 6436, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes.

The bill would amend the definition of the term "economic poison" in the Federal Insecticide, Fungicide, and Rodenticide Act so that nematocides, plant regulators, defoliants, and desiccants would be regarded as economic poisons for the purpose of that act. This automatically would classify these chemicals, with respect to residues thereof on raw agricultural commodities, as "pesticide chemicals" and exclude them from the term "food additive" for the purposes of the Federal Food, Drug, and Cosmetic Act, and thus would require tolerances for the residues on food crops to be established under the pesticide chemicals amendment of that act (sec. 408) rather than under the Food Additives Amendment of 1958 (sec. 409).

We defer to the views of the Department of Agriculture insofar as the effect of the bill upon the Insecticide, Fungicide, and Rodenticide Act, which that Department administers, is concerned.

Subject to modification of the transitional provisions of the bill, discussed below, we see no objection to the bill from the standpoint of the Food, Drug, and Cosmetic Act which this Department administers, since, as above indicated, the permanent effect of the bill would be to require safe tolerances for the four groups of agricultural chemicals named in the title to be established under the pesticide chemicals amendment rather than the food additives amendment. Both laws require adequate scientific proof of safety. Indeed, from our view-

point, some advantage would be gained by having the Secretary of Agriculture certify the usefulness of these chemicals to us, as he is called upon to do under the pesticide chemicals amendment to our act.

We believe, however, that the transitional provisions (sec. 3) of the bill are in need of modification insofar as they pertain to our act.

Section 3(b) would, for a period of time which could extend to as late as March 5, 1961, prevent any of these chemicals which were commercially used before January 1, 1958, from being considered adulterated under the pesticide chemicals amendment to our act when not in conformity with the requirements of that amendment. This transitional period parallels the transitional period during which, under present law, these chemicals need not conform to the pretesting requirements of the food additives amendment. However, unlike the transitional provisions of the food additives amendment (Public Law 85-929, sec. 6(c)), the bill fails to preserve, during this transitional period, the application of the adulteration provisions of the earlier law under which food-bearing residues of added chemicals, if they are poisonous or deleterious substances, would be deemed adulterated unless these chemicals are required in production and meet such tolerance limitations, if any, as we may establish for them.

If enacted in its present form, this section would thus create a loophole in the consumer protection now available under the pure food law. For a period that could extend to March 5, 1961, it would make it more difficult, if not impossible, for this Department to safeguard the public in case crops were marketed with excessive residues of certain nematocides, plant regulators, defoliants, or desiccants. This loophole, which we believe was not intended to be created, could be closed by revising section 3(b) of the bill to read as stated in the proposed substitute enclosed herewith.

With the substitution of the enclosed language, we would have no objection to the enactment of this bill.

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

ELLIOT L. RICHARDSON,
Assistant Secretary.

PROPOSED SUBSTITUTE FOR SECTION 3(b) OF H.R. 6436

"(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of enactment of the Act of July 22, 1954, 68 Stat. 511 (relating to pesticide chemicals on raw agricultural commodities), shall apply until—

"(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

"(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) becomes effective, whichever date first occurs."

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

AN ACT To regulate the marketing of economic poisons and devices, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

DEFINITIONS

SEC. 2. For the purposes of this Act—

a. The term "economic poison" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, *nematodes*, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest [.] and (2) *any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.*

b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, *nematodes*, or such other pests as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term "fungicide" means any substance or mixture or substance intended for preventing, destroying, repelling, or mitigating any fungi.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. *The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.*

h. *The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering*

the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

i. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

j. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

k. The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sacklike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

[g.] l. The term "weed" means any plant which grows where not wanted.

[h.] m. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

[i.] n. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

[j.] o. The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

[k.] p. The term "active ingredient" means—

(1) *in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests* **[.]**;

(2) *in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;*

(3) *in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;*

(4) *in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.*

[l.] *g.* The term "inert ingredient" means an ingredient which is not active.

[m.] *r.* The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

[n.] *s.* The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

[o.] *t.* The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

[p.] *u.* The term "Secretary" means the Secretary of Agriculture.

[q.] *v.* The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act.

[r.] *w.* The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

[s.] *x.* The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons;

[t.] *y.* The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

[u.] *z.* The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this Act;

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be

clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; *or*

(g) if in the case of an insecticide, *nematocide*, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison [.] ; *or*

(h) *if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: Provided, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.*

